Technical Bulletin 1.2

GMA Updates:
Level of Review and Revision for Counties and Cities "Fully Planning" under the Growth Management Act

Key Issue

According to a schedule established by RCW 36.70A.130(4) and updated by ESHB 2171, each city and county in Washington must take action to review and, if needed, revise its comprehensive plan and development regulations to ensure they comply with the Growth Management Act (GMA). The needed level of review and revision will be different in different places, depending on local factors, such as when the jurisdiction adopted its plan and regulations. This bulletin will provide guidance, based on current statutes, for determining the appropriate level of review and revision for local governments that are "fully planning" under the act. (See attached GMA map.)

Discussion

Generally, local plans and regulations should be updated, as necessary, to reflect local needs, new data, and current laws. While updates can be done on a continuing basis, they must occur in a deliberate manner every seven years according to a schedule established by RCW 36.70A.130(4). In 2005, ESHB 2171 was adopted extending the schedule for critical area ordinances for one additional year, for some jurisdictions.

The schedule for when the first update must be completed for these "fully planning" counties and the cities within them follows:

- December 1, 2004 – Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties
- December 1, 2005 for comprehensive plans and most development regulations and December 1, 2006 for critical area ordinances – Island, Lewis, Mason, San Juan, and Skagit counties
- December 1, 2006 for comprehensive plans and most development regulations and December 1, 2007 for critical area ordinances. – Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties
- December 1, 2007 for comprehensive plans and most development regulations and December 1, 2008 for critical area ordinances – Columbia, Ferry, Franklin, Garfield, Pacific, Pend Oreille, Stevens, and Walla Walla counties

This deliberate GMA Update process includes four basic steps: (1) establish a public participation program that identifies procedures and schedules for the review, evaluation,

and possible revision process; (2) review of relevant plans and regulations; (3) analysis of need for revisions; and (4) adoption of an appropriate resolution and/or amendments.

Questions about these steps are discussed below.

What are the relevant plans and regulations to review and evaluate?

The statute does not exempt any portion of a comprehensive plan or development regulation from being subject to review and evaluation. Critical areas ordinances and an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the Office of Financial Management (OFM) are specifically listed [RCW 36.70A.130(1)(b)]. However, local governments may use common-sense factors in determining the *level* of review, taking into account when the plan and regulations were adopted. (See "How Much Review Should be Done?" below.)

At a minimum, the policies and regulations that most local governments should review include those for:

- Urban densities
- Urban growth areas
- Critical areas
- Natural resource lands (especially counties)
- Rural lands, densities, and uses (counties only)
- Essential public facilities
- Affordable housing for all income levels (especially cities)
- Transportation, including levels of service and concurrency
- Public facilities and services to meet future needs
- Shorelines (if applicable)

Each jurisdiction should determine whether its plan and regulations are affected by any amendments made to the GMA after the jurisdiction adopted its comprehensive plan or development regulations [see the Washington State Department of Community, Trade and Economic Development's (CTED) "List of GMA Amendments by Year"]. For many local governments, this includes critical areas. The GMA was amended in 1995 to require that local policies and regulations for critical areas include the best available science and give special consideration to the protection of anadromous fisheries. [See RCW 36.70A.172(1).] No substantial amendments were made to the GMA regarding natural resource lands. However, the state supreme court in two decisions has emphasized the importance of designating and conserving agricultural lands of long-term commercial significance and has clarified the definitions to be used.[1] Counties (and, if applicable, cities) should review their designations and regulations to conserve natural resource lands of long-term commercial significance in light of these decisions.

In addition, local governments are encouraged to consider emerging local and regional needs, changes to state and federal laws, and their own progress toward meeting GMA goals. (See RCW 36.70A.020 for GMA goals.)

[1] *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000); *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 959 P.2d 1091 (1998).

What about population assumptions?

The state OFM provides 20-year population forecasts, expressed in a range from high to low, on a county-by-county basis. Local comprehensive plans must be based on the OFM forecasts. The last time OFM issued its 20-year forecast was in January 2002.

RCW 36.70A.130(1)(b) specifically says that the review and evaluation process must include an analysis of the population allocated to a city or county from the most recent ten-year population forecast by OFM. RCW 36.70A 130(3) requires that counties in collaboration with the cities within the county should evaluate their urban growth areas (UGAs) within ten years of adopting their plan and this evaluation process can be combined with the review and evaluation process required by RCW 36.70A.215. While including an evaluation of UGAs probably makes sense for most jurisdictions, it is not required unless the Update deadline and UGA evaluation coincide in the same year.

CTED Technical Bulletin 1.3 provides more detailed guidance on this issue.

How much review should be done?

The *level* of review can be abbreviated or lengthy, based on certain common-sense factors. For example, *a jurisdiction may use an abbreviated review process if it has recently (since September 2000) adopted or significantly amended its plan and regulations to be consistent with the GMA.* An abbreviated process assumes that recently adopted plans and regulations already comply with the GMA, except as a hearings board or court has found otherwise, and that attention can be focused instead on portions of the plan and regulations that were adopted prior to September 2000, along with any portions that a hearings board or court has determined to be non-compliant. Many towns and cities do not contain any "natural resource lands of long-term commercial significance" and, consequently, will not have regulations to review for such lands.

What local analysis is needed?

A local government must determine whether its existing comprehensive plan and development regulations meet GMA requirements. To help with the analysis, CTED has developed a list of questions ("GMA Update: Issues to Consider When Reviewing Comprehensive Plans and Development Regulations") which identifies key points of analysis for communities to consider. Plans and regulations that were adopted or significantly amended since 2000 to comply with the GMA may need only a minimal analysis for GMA compliance by the GMA Update deadline.

If a jurisdiction has a ruling in effect from either a growth management hearings board or a court of law finding non-compliance with the GMA, the jurisdiction should be sure to incorporate the ruling into its analysis. Any previous comment letters from CTED and other state agencies regarding consistency of a jurisdiction's plan and development regulations with the GMA also should be considered. (Copies of official agency comment letters may be obtained upon request from CTED.) CTED also has developed two detailed checklists (one for comprehensive plans and one for development

regulations) which local governments may use in comparing their plans and regulations with specific GMA requirements.

In addition, jurisdictions should consider whether the comprehensive plan is internally consistent (e.g., that the Land Use and Transportation elements support each other) and that the development regulations are consistent with and implement the comprehensive plan. The GMA requires such consistency. [See RCW 36.70A.040(4) and 36.70A.070.]

Each jurisdiction's analysis must include appropriate public process and should be documented in the public record, reflecting consideration of the assumptions, facts, analysis, and conclusions.

If the analysis shows that the existing plan or regulations do not comply with current GMA requirements, the jurisdiction must take the next step by developing substitute or revised language that will meet GMA goals and requirements. Various technical assistance materials are available from CTED and other state agencies.

What should be adopted?

RCW 36.70A.130(1) requires counties and cities to "take legislative action" to determine whether or not to revise a plan or regulation: "Legislative action means the adoption of a resolution or ordinance following the notice and public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore." Only the local legislative authority can revise the comprehensive plan and development regulations, and the action that must be taken to do so is the adoption of an ordinance or resolution.

Depending on the outcome of its review and analysis, each local government should adopt one of the following by the deadline established for its jurisdiction in RCW 36.70A.130(4) and updated in ESHB 2171:

- A resolution finding that, based on careful consideration of the facts and law, the jurisdiction's comprehensive plan and development regulations comply with the GMA and the jurisdiction has met its update requirement under RCW 36.70A.130(1);
- An amendment (or amendments) to the local comprehensive plan and/or development regulations, so that the plan and regulations comply with the GMA; or
- A combination of both items above.

[CTED cannot waive or extend a jurisdiction's Update deadline.]

In fact, "fully planning" cities and counties must complete GMA Update requirements according to the established schedules to be considered in compliance with the GMA. Only those counties and cities in compliance with these schedules will be eligible to receive funds from the Public Works Trust Fund or the Centennial Clean Water account (RCW 36.70A.130(7)). To receive preference for grants and loans subject to the provisions of RCW 43.155.050, "fully planning" counties and cities must also be in compliance with their established Update schedule. However, a local government that has made significant progress on its Update process, but is not able to adopt all needed

revisions by their Update deadline, would be prudent in taking steps to demonstrate good faith and progress. In such cases, the following interim steps are recommended: (a) adopt by the Update deadline, a resolution that documents the local progress already made and contains a schedule for completing the Update; and (b) continue moving ahead as quickly as possible to be in full compliance with the GMA. [Please note, however, that following these interim steps does not relieve a local government of its Update requirements, nor does it necessarily mean that a local government will be eligible for state grants and loans.]

All draft and adopted plans and regulations, including amendments, must be submitted to CTED according to RCW 36.70A.106. All adopted resolutions regarding the GMA Update also should be submitted to CTED.

Can a jurisdiction's adopted resolution or amendments be appealed to a hearings board?

The short answer is that a person or organization with standing probably could appeal a jurisdiction's resolution or regulatory amendment to a hearings board, based on an argument that the resolution or amendment does not comply with the GMA. However, a jurisdiction that has followed a good process for reviewing and revising its development regulations reduces legal risks considerably.

What if a jurisdiction does not adopt either a resolution or a set of amendments to its plan and development regulations?

If not adopting either an appropriate resolution or regulatory amendment, a jurisdiction will be listed in CTED data as not in compliance with the GMA Update requirement [i.e., RCW 36.70A.030(1)] and also would be vulnerable to a "failure to act" determination by a hearings board. Any amendment to a jurisdiction's comprehensive plan or development regulations is appealable to a hearings board by a person with standing.

Can a jurisdiction complete Update requirements prior to their deadline?

A jurisdiction can complete the Update process prior to their deadline if they complete the process in the manner as described above and if they have completed the process on or after January 1, 2001. The deadline for their next update would then become seven years from the deadline for their jurisdiction as required by RCW 36.70A.130(4).

Contact

For more information, contact the CTED regional planner for your area or the Growth Management Services at (360) 725-3000, or by mail at P.O. Box 42525, Olympia, Washington 98504-2525. GMA Update information will also be posted periodically on the following Web site: *www.cted.wa.gov/growth*.

See GMA map on next page.

Washington State Counties Planning under the GMA